SINGAPORE REPORTS

Ang Boon Kong Lawrence v Law Society of Singapore

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 1136 OF 1989
SINNATHURAY J
28 DECEMBER 1990

Legal Profession — Advocate and solicitor in legal service — Law Society's jurisdiction over deputy public prosecutor in his conduct in court — Finding of dishonourable conduct — Whether finding of Law Society was perverse — Legal Profession Act (Cap 161, 1985 Ed), ss 28(2), 82(1), 85(1) & 92(3)

The applicant was ordered by the Council of the Law Society to pay a penalty of $1,000 under s 85(1) of the Legal Profession Act (Cap 161, 1985 Ed) ('the Act') following its determination of a report of the Inquiry Committee constituted to inquire into a complaint of dishonourable conduct. The applicant then applied to the High Court for an order to set aside the Law Society's order on the grounds that the penalty imposed on him was wrong in law in that the Law Society and the Inquiry Committee had wrongly assumed jurisdiction over him, and that even if they had jurisdiction, the findings of the Inquiry Committee confirmed by the Council were perverse. It was argued for the Law Society on the question of jurisdiction that in theory there could be jurisdiction assumed by the Council in relation to proceedings under Part VII of the Act in respect of an advocate and solicitor who is not in possession of a practising certificate; in other words, any advocate and solicitor who has been duly admitted and is on the rolls could be disciplined or proceedings could be brought against him in the first instance either by or before the Law Society and through the Law Society, the Inquiry Committee. No arguments were submitted by the Law Society in respect of the second ground.

Held, allowing the application:

(1) On the question of jurisdiction, counsel for the Law Society properly conceded, having regard to s 28(2) of the Act, that the applicant specifically has a right of audience in the courts and when he is acting in his capacity as deputy public prosecutor cannot come within s 82(1), in respect of his conduct in his professional capacity.

(2) It is clear that the complaint made refers to the applicant's conduct as deputy public prosecutor in his professional capacity, that it is alleged that it is in this capacity he had used certain words which the complainant considered unwarranted, baseless and dishonourable. Clearly that would not come within the jurisdiction of the Law Society or of the Council or of the Inquiry Committee to look into. Thus the Law Society, the Council and the Inquiry Committee had wrongly assumed jurisdiction.

[*Editorial Note*: The respondent has appealed to the Court Appeal vide Civil Appeal No 38 of 1990.]

Legislation referred to

Legal Profession Act (Cap 217, 1970 Ed), ss 28(2), 82(1), 85(1)

Tan Boon Teik (Attorney General) (*Yang Ing Loong* with him) for the applicant.

M Karthigesu for the respondent.

Sinnathuray J: At the conclusion of the hearing, I delivered the following oral judgment.

'As Mr Karthigesu who appears for the Law Society has rightly said, it is clear after all arguments have been heard that the issue before me this morning is easily resolved. This is an application by Mr Lawrence Ang as the applicant for an order that the order made by the Council of the Law Society directing the applicant to pay a penalty of $1,000 under s 85(1) of the Legal Profession Act (Cap 217, 1970 Ed) ('the Act') following its determination of a report of the Inquiry Committee constituted to inquire into a complaint made by Mr Dube, an advocate and solicitor, be set aside and that the costs of this application be provided for.

In support of that application, Mr Lawrence Ang has filed a lengthy affidavit supported by a number of exhibits. In para 26 of that affidavit he asked that the penalty of $1,000 which had been imposed upon him be declared to be clearly wrong in law, that the respondent and the Inquiry Committee had wrongly assumed jurisdiction over him. And secondly, even if they had jurisdiction, the findings of the Inquiry Committee, and confirmed by the Council, are perverse.

Taking the second point first, Mr Karthigesu for the Law Society has said from the very beginning this morning that he did not propose to address me on the second point. By that concession made by him, it is clear that he cannot support the findings of the Inquiry Committee and the confirmation of those findings by the Council. Here I must say that the learned Chief Justice, when this application came before him in the first instance, when he ordered that a date be fixed for the hearing of these proceedings, had directed the Law Society to file an affidavit exhibiting the report of the Inquiry Committee and the grounds of the Council of the Law Society for assuming jurisdiction. An affidavit has been filed by the executive secretary of the Law Society, but there are no grounds of the Council of the Society of any kind either for assuming jurisdiction or confirming the findings of the Inquiry Committee and imposing the penalty of $1,000. Mr Karthigesu has said from the Bar that he had spoken to the president of the Law Society and he has been told that the Council merely accepted the findings of the Inquiry Committee of which I had been furnished a copy.

So, as I was saying on the merits, the second of the points made by Mr Lawrence Ang in his affidavit, there is no contest. Having heard the learned Attorney General address me fully on the merits, it is clear beyond doubt that there is no evidence whatsoever to support the findings of the Inquiry Committee. The submission of Mr Lawrence Ang before the district judge on all the available facts that he had at the time were most proper. There was nothing unwarranted, baseless or dishonourable as complained of by Mr Dube in his complaint to

the Law Society. It is I think a matter for regret that this matter had to go so far as to reach this court for that decision to be made.

Next, on the question of jurisdiction, Mr Kathigesu has I think very properly put forward a legal argument to say that in theory there could be jurisdiction assumed by the Council in relation to proceedings under Part VII of the Act in respect of an advocate and solicitor who is not in possession of a practising certificate. In other words, any advocate and solicitor who has been duly admitted and is on the rolls could be disciplined or proceedings could be brought against him in the first instance either by or before the Law Society and through the Law Society the Inquiry Committee.

However, for the purposes of this case, Mr Karthigesu for the Law Society has properly conceded, having regard to s 28(2), the declaratory provision in the Act, that Mr Ang specifically has a right of audience in the courts and when he is acting in his capacity as deputy public prosecutor cannot come within s 80, the present s 82(1), in respect of his conduct in his professional capacity.

It is clear to me that the complaint of Mr Dube, call it complaint, call it by any other word, relates to the conduct of Mr Ang in his capacity as deputy public prosecutor, in his professional capacity, that it is alleged by Mr Dube that it is in that capacity he had used certain words which Mr Dube had considered unwarranted, baseless and dishonourable. Clearly that would not come within the jurisdiction of the Law Society or of the Council or of the Inquiry Committee to look into.

So on the first ground on which complaint is taken in this case I agree altogether with the submissions made by the Attorney General, that the Law Society and the Council and the Inquiry Committee had wrongly assumed jurisdiction. In my opinion they did not have the power to do so.

So I will make an order under s 92(3) setting aside the order of the penalty imposed on Mr Lawrence Ang.

The learned Attorney General has also asked for costs of these proceedings and the costs of his appearance for Mr Lawrence Ang before the Council.

I think costs must follow the event. These proceedings should not have been necessary. The Law Society will pay the costs of these proceedings, including the costs of the Attorney General before the Council when Mr Lawrence Ang was called upon to appear before the Council.'

I hereby certify the above grounds of judgment.

Application allowed.

Solicitors: *Tan Rajah & Cheah.*

Reported by *Azra Moiz*

Lim Seow Wah & Anor v Housing & Development Board & Anor

HIGH COURT (SINGAPORE) — SUIT NO 9099 OF 1984
CHAN SEK KEONG J
27 DECEMBER 1990

Tort — Negligence — Occupiers' liability to trespassers — Whether occupier had taken sufficient measures to deter trespassers — Whether occupiers owe duty of care to trespassers

Damages (Personal Injury or Death) — Fatal accident — Loss of earnings for lost years — Deceased aged 18 years — Civil Law Act (Cap 30, 1985 Ed), ss 8 & 12

The deceased, aged 18 years, was injured and died from a head injury as a result of being struck by a falling object. The accident occurred at a construction site which was owned by the first defendants and occupied by the second defendants, who as building contractors were building a block of flats for the first defendants. The plaintiffs, as administrators of the estate of the deceased, claimed damages for negligence against the defendants. At the hearing, the claim against the first defendants was discontinued by consent. The second defendants submitted that they owed no duty of care to the deceased as he was a trespasser who had also been warned by signboards of the dangers of entering the site. Even if there were no signboards, the deceased, by reason of his age, ought to have known of the dangers and therefore the duty of care owed to him was an attenuated duty. The plaintiffs argued that 'the duty owed to trespasses arises when the occupier knows of facts which show a substantial chance that they may come to a place where there is a danger which he has created or knows about, and that the duty is discharged by the occupier taking such steps to avoid it in accordance with the dictates of common humanity and in the light of his own circumstances and financial limitations.'

Held, allowing the plaintiffs' claim:

(1) The evidence adduced by the plaintiffs shows that at the material time members of the public had full and unrestricted access to the site to patronize the coffee stall which was run by a licensee of the defendants. As such the deceased and his companion were not trespassers; they were licensees in the sense that they were free to patronize the coffee stall. In any case, even if they were trespassers, the defendants ought to have foreseen such trespassers coming to the coffee stall to patronize it, applying the principle that 'the occupier ought in principle to be liable to a trespasser who is injured by the occupier's breach of duty towards his visitors, if there are any; but, as a substantive rule of law — a qualification upon *Herrington*'s case — an occupier ought not to be so liable to an adult who trespasses knowingly and without any reasonable excuse for doing so.' In the present case, the deceased did not know of the danger and he had a reasonable excuse to come onto the site.

(2) On the evidence, the second defendants owed a duty of care to all those who came to the site to patronize the coffee stall, and they accordingly owed a duty of care to the deceased, and that they breached their duty of care in not putting up a safety net where and when their employees were hacking the walls of the building. The works created a danger and the deceased was a foreseeable victim. Thus the second defendants are liable for damages. There was no question of contributory negligence on the part of the deceased.